

If a ventilator is directly used to aid a patient in breathing thereby substituting for the patient's lungs, the ventilator will qualify for the low rate. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

July 9, 2003

Dear Xxxxx:

This letter is in response to your letter dated February 20, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA is a manufacturers and service provider of medical equipment. We are one of the largest and most diversified suppliers of medical systems and solutions to the health care industry. On behalf of our customers, as well as the need to remain competitive, we hereby seek a ruling on a AAA NAME ventilator system used to treat a complete range of patient categories from neonate and pediatric to adult.

We have received notification from The Commonwealth of Pennsylvania that this unit is exempt in Pennsylvania and it spurs us to inquire of all state if this therapeutic or prosthetic device, which may be used by particular individuals to correct or alleviate a physical, is exempt from sales and/or use tax. We are contacting your area of expertise in order to receive a legally binding decision on the sale of such units within your state. To aid in your decision-making, we are attaching (as Schedule 1) a full description of our NAME ventilator system.

The cost of this unit is generally between \$65,000 to \$70,000; we have been billing our taxable customer sales tax accordingly and remitted these taxes to the State. AAA was unaware of any exclusion from sales tax on the sale of such medical equipment or the use thereon until a customer brought this potential to our attention.

I appreciate your review of this issue and request that you contact me as soon as a decision is made, by either mail (self-addressed envelope enclosed), telephone or fax (see information below). If you have any questions, or need any further clarification, please do not hesitate to call.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided.

Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

As stated above, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. A ventilator can qualify as a medical appliance if it directly substitutes for a malfunctioning part of the body, in this case the lungs. If a ventilator is directly used to aid a patient in breathing thereby substituting for the patient's lungs, the ventilator will qualify for the low rate. If however, the ventilator were used in another way, such as to treat patients by administering medicine to them, the ventilator would not qualify because it is not being used in a qualifying manner. In other words, it is not the item itself that qualifies or does not qualify, but the manner in which it is being used.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.